IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Khadi Gramdyog Prathisthan,Bikaner	vs.	State Employees lnsurance Corporation, Rajasthan.

S.B. Civil Misc. Appeal No. 133/1988 against the order dated 4.6.1988 passed by the ESI Court, Bikaner in Civil Misc. (Insurance) Case No.2/1981.

Date of Judgment: October 06, 2006.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. Rajesh Joshi for the appellant.
Mr. Mridul Jain for the respondent.

BY THE COURT:

Heard learned counsel for the parties.

The appellant has challenged the order of the E.S.I. Court Bikaner dated 4.6.1988 by which the E.S.I. Court, Bikaner rejected the appellant's petition filed under Sections 75 and 77 of the Employees State Insurance Employees Act, 1948 (for short “the Act of 1948”) and held that the demand raised against the appellant by the E.S.I. Department of Rs.43,971.62 is valid demand.

Brief facts of the case are that the premises of the appellant was inspected by the officer of the E.S.I. Department and report Ex.A.1 was prepared. The E.S.I. Inspector found that some of the employees of the

appellant have not been shown as employees and their contribution has not been deposited by the employer. The notices were issued to the employer time to time but still the amount was not deposited by the appellant alleged employer. Ultimately, the above demand of Rs. 43,971.62 was raised against the appellant which has been challenged by filing petition under Sections 75 and 77 of the aforesaid Act of 1948.

The contention of the appellant-applicant was that in fact the appellant is regularly depositing the appellant's contribution towards employees amount under the Act of 1948 but the respondent-E.S.I. Department is seeking to recover the amounts for those employees who are in fact not the employees of the appellant. It is submitted that some casual work was given to some persons who are *"bunkar", "kathin" and "godhbharai"* etc. It is submitted that those persons are not in continuous employment of the appellant nor the appellant has any supervisory control over them nor these persons are subjected to any disciplinary action in case of any misconduct. Therefore, the recovery sought for the persons is not for the appellant's employees.

The learned counsel for the appellant pointed out that the respondent's own witnesses clearly admitted that the persons who have been entered as employees in the register of the appellant, for those persons, the appellant paid the contribution. He specifically admitted that no enquiry was conducted for alleged other employees. The learned

counsel for the appellant submitted that in identical matter when question arose about the liability of the appellant under the State Insurance Act for persons who are engaged in ironing, printing for the appellant, the E.S.I. Court itself held that looking to the facts there is no relationship of master and servant between the appellant and the alleged persons. Said decision of the E.S.I. Court dated 9.2.1984 was challenged by preferring S.B.Civil Misc. Appeal No.74/84 which was dismissed by this Court on 1.12.1987 and present case is covered by the said decision.

The contention of the department was that even if work is done by the persons not within factory premises of the employer even then those persons are entitled to take benefit of the Act of 1948. It is submitted that for creation of relationship of employee and employer, it is not necessary that the employee should work under the direct control or supervision of the employer at the employer's work place.

The learned counsel for the respondent submitted that the scope under the Employees State Insurance Act, 1948 defining the employee is not so narrow as projected by the appellant. The learned counsel for the respondent submitted that the persons who are not directly engaged by the employer but are engaged through contractor and the persons who are employed in connection with the work of the unit of the employer, are also covered under the provisions of the Act of 1948. Not only this

even persons who are doing work at their own home they are also covered under the Employees State Insurance Act, 1948. The learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court delivered in the case of M/s P.M. Patel & Sons & ors. v. Union of India & ors (AIR 1987 SC 447) and submitted that in view of the said judgment, the court below rightly after considering the judgment of this Court delivered in S.B.Civil Misc. Appeal No.74/84 which was decided on 1.12.1987, declared that the demand raised against the appellant is valid.

I considered the submissions of the learned counsel for the parties.

In view of the decision of the Hon'ble Supreme Court delivred in the case of M/s. P.M. Patel & Sons and others v. Union of India & ors. (AIR 1987 SC 447), the definition of “employee” is wide. The “employee” includes not only persons employed directly by the employer but also persons employed through contractor. It includes not only persons employed in the factory but also persons employed in connection with the work of the factory.The home worker is also included in the activity connected with the work of the factory and, therefore, even home worker also falls within the definition of employee. It is true that the said judgment of Hon'ble the Apex Court in the case of M/s. P.M. Patel(supra) was delivered under the Beedi and

Cigar Workers (Conditions of Employment) Act, 1966 but the ratio decendi can be applied in cases under the provisions of the Employees Insurance Act, 1948.

But it appears from the facts of the present case that the court below committed serious error of law by misreading the statement of the respondent's witnesses DW-1 as well as DW-2. The respondent's witnesses categorically stated that no enquiry was conducted to find out whether the persons who are alleged to have been employed by the appellant in connection with its work, were employed in regular course of business or not. The benefit of the Act of 1948 cannot be extended to those persons who had worked only for one or two or few days only as per the need of the employer's urgent work. It is true that definition of “employee” is wide and in view of the nature of the Act of 1948 and to provide benefit to the large number of persons, the definition of the employee has been kept wide but still to cover one under the definition of the “employee”, there must be co-relationship of employment. Hon'ble the Apex Court in the case of M/s P.M. Patel(supra) held that when the employer gets the right to reject the work of person to whom it has been given then that gives employer the controlling power and, therefore, relationship of employer and the employee establishes. In view of the nature of the work, it may not be practicable for the employer or the employee that all works be done at the factory

premises itself. Certain works like beedies rollings or stitching, ironing etc. can be done by the ladies at their home in their leisure time and if persons are regularly engaged in the course of business, then they should also get the benefit of the Act of 1948 and there cannot be any dispute for this. But extending this benefit to those persons who are not in the employment in regular course of business and came once in a while in a month's time or weeks' time, then it may be unworkable for applying the Act of 1948 for those persons as those persons may not get the actual benefit under the Act, still there will be liability of the employer. In view of the above, it is the duty of the E.S.I. Department to enquire into the matter thoroughly, collect evidence and thereafter extend the benefit to those persons who are engaged in regular course of business of the factory.

Here in this case, since there is no evidence that the persons for whom the recovery has been raised, were engaged in the regular course of business by the appellant and it is admitted case that the appellant has disclosed its employees by furnishing the requisite form disclosing that it has 68 employees, it is a case of raising demand without there being any factual foundation. At the cost of repetition it may be observed that important witness of the ESI Department who himself surveyed the premises of the appellant, admitted that no enquiry was conducted with respect to the persons whose names are not mentioned

in the employees' register and who further admitted that so far as the employees named in the register are concerned, their amount has been deposited by the appellant.

In view of the above discussion, the appeal deserves to be allowed and hence allowed. The order dated 4.6.1988 passed by the E.S.I. Court, Bikaner is set aside. No order as to costs.

(PRAKASH TATIA),J.

mlt.